

CCRB INVESTIGATIVE RECOMMENDATION

| | | | | | |
|--|---|-------------------------------|---|---|--|
| Investigator: Alex Tuminello | Team: Squad #14 | CCRB Case #: 201410712 | <input checked="" type="checkbox"/> Force | <input checked="" type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input checked="" type="checkbox"/> Injury |
| Incident Date(s) Saturday, 10/18/2014 7:13 PM | Location of Incident: § 87(2)(b) and the 121st Precinct stationhouse | Precinct: 121 | 18 Mo. SOL 4/18/2016 | EO SOL 4/18/2016 | |
| Date/Time CV Reported Mon, 10/20/2014 3:16 PM | CV Reported At: CCRB | How CV Reported: In-person | Date/Time Received at CCRB Mon, 10/20/2014 3:16 PM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------------|--------------|
| § 87(2)(b) | § 87(2)(b) | § 87(2)(b) |
| § 87(2)(b) | § 87(2)(b) | § 87(2)(b) |

| Witness(es) | Home Address |
|-------------|--------------|
| § 87(2)(b) | § 87(2)(b) |

| Subject Officer(s) | Shield | TaxID | Command |
|----------------------|--------|--------|---------|
| 1. POM Omar Elsayed | 06763 | 950376 | 121 PCT |
| 2. POM Lee Maldonado | 02132 | 948083 | 121 PCT |
| 3. SSA John Todaro | 05234 | 903307 | 121 PCT |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|------------------------|-----------|--------|----------|
| 1. POM Besim Pelinku | 29412 | 946100 | 121 PCT |
| 2. POM Ricky Alexander | 12750 | 943996 | 121 PCT |
| 3. POM Jose Tabora | 17232 | 943856 | 121 PCT |
| 4. POM Daniel Golat | 09913 | 950506 | 121 PCT |

| Officer(s) | Allegation | Investigator Recommendation |
|---------------------|---|-----------------------------|
| A.POM Omar Elsayed | Abuse: Inside of § 87(2)(b) in Staten Island, PO Omar Elsayed questioned § 87(2)(b) | § 87(2)(b) |
| B.POM Lee Maldonado | Abuse: Inside of § 87(2)(b) in Staten Island, PO Lee Maldonado questioned § 87(2)(b) | § 87(2)(b) |
| C.POM Omar Elsayed | Abuse: Inside of § 87(2)(b) in Staten Island, PO Omar Elsayed stopped § 87(2)(b) | § 87(2)(b) |
| D.POM Lee Maldonado | Abuse: Inside of § 87(2)(b) in Staten Island, PO Lee Maldonado stopped § 87(2)(b) | § 87(2)(b) |
| E.POM Omar Elsayed | Abuse: PO Omar Elsayed entered § 87(2)(b), in Staten Island | § 87(2)(b) |
| F.POM Lee Maldonado | Abuse: PO Lee Maldonado entered § 87(2)(b), in Staten Island. | § 87(2)(b) |
| G.POM Omar Elsayed | Discourtesy: Inside of § 87(2)(b) in Staten Island, PO Omar Elsayed spoke rudely to § 87(2)(b) | § 87(2)(b) |
| H.POM Lee Maldonado | Force: Inside of § 87(2)(b) in Staten Island, PO Lee Maldonado used physical force against § 87(2)(b) | § 87(2)(b) |
| I.POM Lee Maldonado | Force: Inside of § 87(2)(b) in Staten Island, PO Lee Maldonado used a chokehold against § 87(2)(b) | § 87(2)(b) |
| J.POM Lee Maldonado | Force: Inside of § 87(2)(b) in Staten Island, PO Lee Maldonado restricted the breathing of § 87(2)(b) | § 87(2)(b) |

| Officer(s) | Allegation | Investigator Recommendation |
|---------------------|--|-----------------------------|
| K.POM Lee Maldonado | Force: Outside of § 87(2)(b) in Staten Island, PO Lee Maldonado used physical force against § 87(2)(b) | |
| L.POM Lee Maldonado | Discourtesy: Outside of § 87(2)(b) in Staten Island, PO Lee Maldonado spoke rudely to § 87(2)(b) | |
| M.SSA John Todaro | Discourtesy: At the 121st Precinct stationhouse, Sgt. John Todaro spoke rudely to § 87(2)(b) | |
| N.POM Lee Maldonado | Force: At the 121st Precinct stationhouse, PO Lee Maldonado used physical force against § 87(2)(b) | |
| O.SSA John Todaro | Abuse: At the 121st Precinct stationhouse, Sgt. John Todaro authorized a strip search of § 87(2)(b) | |
| P.POM Lee Maldonado | Discourtesy: At the 121st Precinct stationhouse, PO Lee Maldonado spoke rudely to § 87(2)(b) | |
| Q.POM Lee Maldonado | Abuse: At the 121st Precinct stationhouse, PO Lee Maldonado strip searched § 87(2)(b) | |
| R.POM Lee Maldonado | Abuse: At the 121st Precinct stationhouse, PO Lee Maldonado threatened § 87(2)(b) with the use of force. | |

Case Summary

On October 18, 2014, at approximately 7:13 p.m., § 87(2)(b) was taking out the garbage at his girlfriend § 87(2)(b) apartment complex located at § 87(2)(b) in Staten Island. While in the 10th floor hallway, walking back to the apartment, § 87(2)(b) observed two plainclothes officers identified by the investigation as PO Omar Elsayed and PO Lee Maldonado of the 121st Precinct exit from a staircase door. § 87(2)(b) asked the officers, “What happened?” PO Elsayed then allegedly stated, “Hey buddy. Do you live here?” (**Allegation A**) § 87(2)(b) stated that he did and PO Elsayed allegedly requested to see his ID. § 87(2)(b) began to back-peddle and asked, “Why did I do something?” Both officers then allegedly asked him several more times for ID (**within Allegation A and Allegation B**) and § 87(2)(b) went to grab the door of apartment § 87(2)(b) which belonged to § 87(2)(b). Both officers then sped walked up to the door and PO Elsayed allegedly stated, “Bro, let me see your ID.” The conversation then continued in the hallway of the apartment. § 87(2)(b) stated that the door of the apartment was cracked and both officers pushed on the door while PO Elsayed placed his right foot in the door to prevent § 87(2)(b) from closing it (**Allegations C, D, E and F**). § 87(2)(b) pushed back on the door to try to close it. PO Elsayed allegedly stated, “Bro, are you fucking crazy?” (**Allegation G**) § 87(2)(b) then screamed § 87(2)(b) name and let go of the door. The officers then allegedly entered the apartment (**within Allegations E and F**). § 87(2)(b) stated that as he began to back away from the officers, PO Maldonado allegedly shoved § 87(2)(b) with his right forearm and stated, “Back-up.” (**Allegation H**) § 87(2)(b) then told the officers to cuff him and PO Elsayed grabbed his right arm. PO Maldonado then allegedly pushed his head down and placed him in a headlock, with his bicep and forearm making contact with his windpipe (**Allegations I and J**). § 87(2)(b) said the contact with his windpipe lasted for approximately ten seconds, prompting him to complain that he could not breathe, and that PO Maldonado then let him go. § 87(2)(b) was placed in handcuffs, escorted out of the location he was placed in a dark Chevrolet Impala. After being placed in the vehicle, PO Maldonado allegedly swung his arm at § 87(2)(b) and his fist hit him in the chest (**Allegation K**). PO Maldonado then allegedly grabbed § 87(2)(b) s shirt, pulled him towards him and allegedly said, “You motherfucker, I am going to make sure I look for you every day I work, my whole eight hour shift.” (**Allegation L**)

Upon arrival at the 121st Precinct stationhouse, an officer identified by the investigation as Sgt. John Todaro allegedly opened the door of the Impala and allegedly stated to § 87(2)(b) “You fucking like hitting my officers, you fucking punk, don’t worry about it because you are going to fucking jail (**Allegation M**)” § 87(2)(b) alleged that as he was walked into the stationhouse, PO Maldonado continuously gave him a light shove into a brick-wall (**Allegation N**). § 87(2)(b) was then taken to a white room at the back of the stationhouse and Sgt. Todaro allegedly told him that a strip search would be conducted (**Allegation O**). PO Maldonado directed § 87(2)(b) to turn around and stated, “Open up your ass and lift your sack up (**Allegation P**).” PO Maldonado then strip searched him (**Allegation Q**). While in the cells, § 87(2)(b) also alleged that PO Maldonado stated to him, “Shut the fuck-up, you are going to jail motherfucker. I am going to take off my fucking gear and whip your ass (**within Allegation P and Allegation R**).

On December 5, 2014, this case was reassigned from Investigator Tuminello to Investigator Landino. On April 27, 2015, this case was reassigned back to Investigator Tuminello for closure.

Mediation, Civil and Criminal Histories

- This case was ineligible for mediation because § 87(2)(b) was arrested in regards to this incident.
- As of May 12, 2015, § 87(2)(b) has not filed a Notice of Claim with the NYC Comptroller’s Office in regards to this incident (Encl. Board Review 12).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- § 87(2)(b)
- PO Elsayed has been a member of the service for three years and has been the subject of 31 previous CCRB allegations in 11 cases. He was substantiated for a vehicle search in CCRB case no. 201403333. The board recommended command discipline. However, the NYPD did not impose any disciplinary action in regards to this case. § 87(2)(g) his previous complaints indicate one stop allegation which was closed as exonerated, three discourtesy allegations which were closed as victim uncooperative and unsubstantiated and a premises entered or searched which was closed as complainant uncooperative.
- PO Maldonado has been a member of the service for six years and has been the subject of 13 previous CCRB allegations in two cases with no substantiated allegations. § 87(2)(g) his previous complaints include a discourtesy allegation which was closed as unsubstantiated.
- Sgt. Todaro has been a member of the service for 21 years and has been the subject of 49 previous CCRB allegations in 16 cases. In CCRB case no. 200401124, he was substantiated for a retaliatory summons and the board recommended charges. Sgt. Todaro received instructions from the NYPD. In CCRB case no. 200603776, Sgt. Todaro was substantiated for a question and stop, threat of arrest and a frisk. The board recommended charges. However, the NYPD did not impose any disciplinary action in regards to this case. § 87(2)(g) his previous complaints include nine discourtesy allegations which were closed as complainant uncooperative, unsubstantiated and one allegation is currently pending panel review.

Potential Issues

- § 87(2)(b) was deemed uncooperative after she missed two scheduled CCRB appointments without calling ahead of time to cancel or reschedule.
- On December 8, 2014, Investigator Landino contacted § 87(2)(b) via telephone in regards to acquiring a CCRB statement from his daughter § 87(2)(b) who was also present during the incident. However, § 87(2)(b) stated that he did not want his daughter providing a statement to the CCRB because she was “traumatized” from the incident.

Civilian Statements

§ 87(2)(b) (COMPLAINANT/VICTIM)

- On October 20, 2014, § 87(2)(b) was interviewed at the CCRB.
- § 87(2)(b) alleged that while he was in the hallway of his girlfriend § 87(2)(b) apartment located at § 87(2)(b) Staten Island, he was approached by PO Elsayed and PO Maldonado of the 121st Precinct. PO Elsayed asked him if he lived at the location and whether or not he had ID.
- The officers asked § 87(2)(b) for ID approximately three to four times before he sped walked up to the door of apartment § 87(2)(b) which belonged to § 87(2)(b) § 87(2)(b) then opened the door to enter the apartment but PO Elsayed stuck his right foot in the door to prevent him from closing it. As § 87(2)(b) went to the close the door, PO Elsayed stated, “Bro are you fucking crazy.” Both

- officers then pushed on the door and § 87(2)(b) pushed back and screamed his girlfriend's name.
- § 87(2)(b) then approached the door and § 87(2)(b) let go. The officers then entered the location and PO Elsayed stated, "We are the police." As the officers entered, § 87(2)(b) backed away from the door and emptied his pockets. PO Maldonado then shoved § 87(2)(b) with his right forearm and she was hit in the chest and her back and head made contact with a wall. § 87(2)(b) then stated to the officers, "Just cuff me."
 - § 87(2)(b) alleged that PO Elsayed then grabbed his right arm and PO Maldonado allegedly pushed his head down to place him in a headlock. § 87(2)(b) alleged that PO Maldonado's bicep and forearm made contact with his wind-pipe and he stated that he could not breathe two times. The headlock allegedly lasted approximately 10 seconds before PO Elsayed instructed PO Maldonado to let go of § 87(2)(b).
 - § 87(2)(b) was then handcuffed and taken down the elevator to an unmarked dark Impala. PO Maldonado then allegedly swung his arm at § 87(2)(b) as he sat in the vehicle and hit him in the chest. PO Maldonado then allegedly grabbed his shirt and pulled § 87(2)(b) towards him and stated, "You motherfucker, I am going to make sure I look for you every day I work, my whole eight hour shift."
 - Upon arrival at the 121st Precinct stationhouse, Sgt. Todaro allegedly opened the passenger door of the Impala where § 87(2)(b) was seated and allegedly stated, "You fucking like hitting my officers, you fucking punk, don't worry about it because you are going to fucking jail." As § 87(2)(b) was walked into the stationhouse, PO Maldonado continuously gave him a light shove into a brick wall. § 87(2)(b) was then walked into the back of the stationhouse and placed in a white room. Sgt. Todaro then notified him that a strip search would be conducted. PO Maldonado then instructed § 87(2)(b) to turn around and allegedly stated, "Open your ass and lift your sack up." § 87(2)(b) alleged that the strip search lasted approximately a minute to a minute and thirty seconds. § 87(2)(b) alleged that after being placed in the cells, PO Maldonado stated to him, "Shut the fuck-up, you are going to jail motherfucker. I am going to take off my fucking gear and whip your ass."

Medical Records

- On October 19, 2014, § 87(2)(b) arrived § 87(2)(b) via ambulance. § 87(2)(b) stated that on October 18, 2014, he was involved in an altercation with the NYPD, in which he was punched and kicked. § 87(2)(b) complained of pain to his arms and knee, as well as back and neck discomfort. A physical examination determined he had bruising to his back, as well as tenderness on both arms and his shoulder. He was ultimately diagnosed with a contusion. (Encl. See Medical Records Folder)

Officer Statements

POLICE OFFICER OMAR ELSAYED (SUBJECT OFFICER)

- On December 30, 2014, PO Elsayed was interviewed at the CCRB.
- PO Elsayed stated that on October 18, 2014, at approximately 7 p.m., he and PO Maldonado were conducting a vertical sweep at § 87(2)(b) in Staten Island, where PO Elsayed said there was high crime and drug trafficking. While on the 10th floor of the building, § 87(2)(b) was approximately five feet from the officers when they observed him reach into his pockets as he approached them. PO Elsayed identified himself as an officer and asked him how he was doing. PO Elsayed stated that there was no other reason for the stop besides § 87(2)(b)'s action of putting his hands inside of his pockets. § 87(2)(b) then began to curse at the officers and pushed PO Elsayed out of the way. He then ran approximately five feet from the officers and entered an unlocked apartment.

- § 87(2)(b) attempted to close the apartment door on the officers and refused to answer their questions. PO Elsayed prevented § 87(2)(b) from closing the apartment door by using his forearm to push the door open and wedged his foot in the doorway.
- The officers also observed two females inside of the apartment. These females have been identified by the investigation as § 87(2)(b) and § 87(2)(b). PO Elsayed began to talk to § 87(2)(b) in order to calm down the situation. PO Elsayed also stated that he asked § 87(2)(b) for his ID approximately ten times.
- § 87(2)(b) approached the officers as they stood in the doorway and stated, “You’re going to have to arrest me.” PO Elsayed then told him to put his hands behind his back. § 87(2)(b) pushed the officers away and punched PO Elsayed in the face. § 87(2)(b) then ran down the hallway and towards a flight of stairs. The officers caught up to § 87(2)(b) at the stairwell and he stated to the officers, “All right you got me officers.”
- PO Elsayed grabbed § 87(2)(b) in order to handcuff him and he immediately resisted arrest by flailing his arms. PO Elsayed stated that it took him approximately one minute to handcuff § 87(2)(b). § 87(2)(b) at no point did he or PO Maldonado make contact with § 87(2)(b)’s neck area. § 87(2)(b) was then brought downstairs and placed in an unmarked vehicle.
- While at the 121st Precinct stationhouse, PO Elsayed stated that he did not observe any injuries on § 87(2)(b) and he searched § 87(2)(b) pursuant to his lawful arrest. PO Elsayed stated that he and PO Maldonado placed § 87(2)(b) into the cells. At no point was a strip search conducted on § 87(2)(b) at the stationhouse. PO Elsayed denied all physical force allegations and stated that at no point did any officers speak rudely to § 87(2)(b).

POLICE OFFICER LEE MALDONADO (SUBJECT OFFICER)

- On December 30, 2014, PO Maldonado was interviewed at the CCRB.
- On October 18, 2014, PO Maldonado was conducting a vertical sweep inside of § 87(2)(b) in Staten Island. On the § 87(2)(b), they were approximately 15 to 20 feet away from § 87(2)(b) when he made eye contact with the officers and put his hands in his pockets. The officers then asked him if he lived in the building and requested ID. PO Maldonado stated that the officers stopped § 87(2)(b) to ask a non-accusatory question and that he was free to leave.
- § 87(2)(b) stated, “Fuck you I am not giving ID” and pushed PO Elsayed. He then ran to an unlocked apartment door which was a few feet away and attempted to shut the door. PO Elsayed then put his foot in the door in order to prevent § 87(2)(b) from closing it.
- Both PO Maldonado and PO Elsayed pushed the door open but did not enter the apartment. The officers just remained at the doorway. After removing items from his pockets, § 87(2)(b) re-approached the door and PO Maldonado asked him to step outside and present his ID. The officers also spoke with § 87(2)(b) and she attempted to speak with § 87(2)(b) about giving the officers his ID.
- § 87(2)(b) then stated to the officers, “You know what, fuck it. Take me to jail.” § 87(2)(b) then stepped in the hallway, punched PO Elsayed in the right eye and ran down the hallway and into a staircase. PO Maldonado and PO Elsayed ran after § 87(2)(b) and apprehended him in a staircase. § 87(2)(b) resisted arrest by flailing his arms and pushing the officers away from him. PO Maldonado denied making or seeing PO Elsayed make any physical contact with § 87(2)(b) during the incident. PO Maldonado denied ever making or seeing PO Elsayed make physical contact with § 87(2)(b)’s neck or throat area and stated that he did not hear § 87(2)(b) state that he could not breathe.
- PO Maldonado denied directing any profanities towards § 87(2)(b) on the date of the incident and did not hear any other officers do so. PO Maldonado also stated that a strip search was not conducted of § 87(2)(b) at any point.

SERGEANT JOHN TODARO (SUBJECT OFFICER)

- On January 13, 2015, Sgt. Todaro was interviewed at the CCRB.
- On October 18, 2014, at approximately 7 p.m., Sgt. Todaro was at the 121st Precinct stationhouse when PO Elsayed requested additional units at § 87(2)(b) in Staten Island over the radio. As he attempted to respond to the location with PO Ricky Alexander, he heard over the radio that PO Elsayed and PO Maldonado were already on their way back to the stationhouse. Sgt. Todaro then turned the car around and returned back to the stationhouse.
- Sgt. Todaro was inside the 121st Precinct stationhouse, behind the desk, when PO Elsayed and PO Maldonado arrived with § 87(2)(b). He did not see any injuries on § 87(2)(b). Sgt. Todaro did not speak with § 87(2)(b) and did not recall any other officers interacting with § 87(2)(b) at the stationhouse.
- A normal search was conducted of § 87(2)(b) and Sgt. Todaro was not aware of a strip search occurring of § 87(2)(b) and he did not authorize one. Sgt. Todaro did not hear any profanities being used against § 87(2)(b).

POLICE OFFICER BESIM PELINKU (WITNESS OFFICER)

- On February 10, 2015, PO Pelinku was interviewed at the CCRB.
- On October 18, 2014, PO Pelinku was assigned to Anti-Crime with PO Alexander and Sgt. Todaro; however, he ended his tour at 4 p.m. When PO Pelinku ended his tour, he did not encounter any civilians in the parking lot of the stationhouse.

POLICE OFFICER RICKY ALEXANDER (WITNESS OFFICER)

- On February 11, 2015, PO Alexander was interviewed at the CCRB.
- On October 18, 2014, PO Alexander and Sgt. Todaro left the 121st Precinct stationhouse in order to respond to a radio transmission for additional officers at § 87(2)(b) in Staten Island. When the officers were halfway to the incident location, PO Elsayed and PO Maldonado announced over the radio that they had the individual under arrest at the location. The officers then returned to the stationhouse.
- PO Elsayed and PO Maldonado arrived at the stationhouse a few minutes after PO Alexander and Sgt. Todaro. As they walked § 87(2)(b) to the front desk, he was giving the officers resistance by moving his body and was cursing at the officers.
- PO Alexander was not aware of any strip search being conducted of § 87(2)(b). He stated that he never interacted with § 87(2)(b) and he did not hear any officers direct any profanities at § 87(2)(b).

POLICE OFFICER DANIEL GOLAT (WITNESS OFFICER)

- On March 5, 2015, PO Golat was interviewed at the CCRB.
- PO Golat did not have an independent recollection of this incident and stated that his tour began after the incident time, at approximately 7:30 p.m. PO Golat stated that he was aware that PO Elsayed was injured earlier in the day because later in his tour, PO Golat read PO Elsayed's arrest report which was generated for § 87(2)(b). He was not aware of an incident that occurred at § 87(2)(b).
- PO Golat stated that he did not hear any officer use profanities inside of the stationhouse and he did not speak to any civilians in the 121st Precinct stationhouse.

POLICE OFFICER JOSE TABORA (WITNESS OFFICER)

- On March 5, 2015, PO Tabora was interviewed at the CCRB.
- PO Tabora did not have an independent recollection of an incident that had occurred at § 87(2)(b) in Staten Island. He did not recall if he saw PO Elsayed and PO Maldonado at any point on the date of the incident. He did not recognize § 87(2)(b) from his CCRB photograph.

NYPD Documents

- According to arrest report number § 87(2)(b) and complaint report number § 87(2)(b), on October 18, 2014, at approximately 7:13 p.m., inside of § 87(2)(b) in Staten Island, PO Elsayed was conducting a vertical at the location when he observed § 87(2)(b) on the 10th floor hallway. PO Elsayed asked § 87(2)(b) if he lived in the building at which time, § 87(2)(b) pushed PO Elsayed and struck him with a closed fist in the right eye causing pain and swelling. When attempting to handcuff § 87(2)(b) he was kicking his arms and legs and refusing to let the officers handcuff him. § 87(2)(b) was charged with § 87(2)(b) § 87(2)(b) (Encl. Board Review 03 and Board Review 04).
- According to event summary number § 87(2)(b) from October 18, 2014, at approximately 7:11 p.m., an individual identified by the investigation as § 87(2)(b) was arrested inside of § 87(2)(b) in Staten Island. At approximately 7:52 p.m., all members of the service were accounted for and no shots were fired inside of the location. At approximately 8:21 p.m., a minor injury is noted to a member of the service (Encl. Board Review 05).
- According to the Tour 3 Roll Call for the 121st Precinct on October 18, 2014, PO Elsayed and PO Maldonado were working inside of vehicle number 301 and were assigned to Anti-Crime. Sgt. Todaro was the Anti-Crime Supervisor on the date of the incident. He was working inside of vehicle number 248 with PO Alexander (Encl. Board Review 06).
- The Tour 3 Command Log from the 121st Precinct on October 18, 2014 indicates that at approximately 7:25 p.m., § 87(2)(b) was logged into the stationhouse by PO Elsayed. His physical and mental condition is listed as apparently normal. The Command Log also indicates that at approximately 11:20 p.m., § 87(2)(b) was transported to the 120th Precinct via vehicle number 8834 (Encl. Board Review 07).
- § 87(2)(b)'s arrest photograph does not indicate any bruises or lacerations to his facial and neck area (Encl. Board Review 10).
- According to the Prisoner Holding Pen Roster from October 18, 2014, § 87(2)(b) was logged into the cells at the 121st Precinct at approximately 7:38 p.m. At approximately 11:20 p.m., he was taken out of the cells in order to be transported to the 120th Precinct (Encl. Board Review 11).

Findings and Recommendations

Explanation of Subject Officer Identification

PO Elsayed and PO Maldonado confirmed they were the officers who encountered § 87(2)(b) in the hallway at § 87(2)(b). § 87(2)(b)'s descriptions of the subject officers correspond to the very distinct pedigree information of PO Elsayed and PO Maldonado (the former is six feet tall and weighs 220 pounds, the latter is five feet and four inches tall and weighs 158 pounds).

§ 87(2)(b) alleged that it was PO Elsayed who first asked if he lived in the building, asked if he was “fucking crazy,” and stuck his foot in the doorway. § 87(2)(b) alleged that both officers asked for his ID and entered his apartment. § 87(2)(g)

§ 87(2)(b) alleged that it was PO Maldonado who pushed § 87(2)(b) with his forearm, placed § 87(2)(b) in a headlock and made contact with his windpipe, and hit him and cursed at him in the police vehicle. § 87(2)(b) also alleged that it was PO Maldonado who shoved him into a brick wall while escorting him into the stationhouse, cursed at and threatened him at the stationhouse, and actually conducted the strip search. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) alleged that an officer in the 121st Precinct stationhouse parking lot said to him, “You fucking like hitting my officers? You fucking punk, don’t worry about it because you are going to fucking jail.” § 87(2)(b) said this same officer also notified him that he would be strip searched before being placed in the cells. § 87(2)(b) described this officer as a white man in his 40s, six feet and two inches to six feet and three inches tall, with a medium build, brown hair, and brown eyes, and wearing in plainclothes. This generally matches the pedigree information of Sgt. Todaro, a § 87(2)(b) old white man who stands six feet and one inch tall and weighs 255 pounds. As the anti-crime sergeant, Sgt. Todaro was the supervisor of PO Elsayed and PO Maldonado that day. The nature of the comments, in which he refers to “my officers” and informs § 87(2)(b) that a strip search would be conducted, are consistent with the responsibilities of a sergeant. Furthermore, Sgt. Todaro’s operator, PO Alexander, testified that he and Sgt. Todaro arrived at the stationhouse within a few minutes of PO Elsayed and PO Maldonado, making it likely that Sgt. Todaro would have encountered § 87(2)(b) in the parking lot. § 87(2)(g)

Allegations Not Pleaded:

§ 87(2)(g)

Allegation A: Abuse of Authority- Inside of § 87(2)(b) in Staten Island, PO Omar Elsayed questioned § 87(2)(b)

Allegation B: Abuse of Authority- Inside § 87(2)(b) in Staten Island, PO Lee Maldonado questioned § 87(2)(b)

Allegation C: Abuse of Authority- Inside of § 87(2)(b) in Staten Island, PO Omar Elsayed stopped § 87(2)(b)

Allegation D: Abuse of Authority- Inside of § 87(2)(b) in Staten Island, PO Lee Maldonado stopped § 87(2)(b)

§ 87(2)(b) alleged that upon throwing the garbage out into a trash room located on the 10th floor of § 87(2)(b) in Staten Island, he was approached by PO Elsayed and PO Maldonado. PO Elsayed stated to him, “What’s going on buddy. Do you live here?” § 87(2)(b) stated that he did and PO Elsayed requested to see his ID. § 87(2)(b) then began to back-peddle and asked, “Why did I do something?” PO Elsayed and PO Maldonado then asked him three to four more times for ID. § 87(2)(b) then grabbed his girlfriend § 87(2)(b) apartment door and the officers sped walked and followed him to the door. PO Elsayed then asked him for his ID again. § 87(2)(b) then entered inside of the location and the officers attempted to prevent him from closing the door.

Both PO Elsayed and PO Maldonado stated that they were the only officers present when they were conducting a vertical sweep at § 87(2)(b) in Staten Island, where PO Elsayed noted there is high crime and drug trafficking. Both officers stated that while on the 10th floor of the location, they observed § 87(2)(b) walking down the hallway. Both officers stated that as § 87(2)(b) walked towards them, he put his hands in his pockets. PO Maldonado also stated that § 87(2)(b) made eye contact with the officers as he put his hands in his pockets. PO Elsayed stated that there was no other reason for the stop. The officers stated that they then asked § 87(2)(b) if he lived in the building and requested his ID. PO Elsayed characterized the request for ID as a stop, but PO Maldonado said that the officers had only asked a non-accusatory question and that § 87(2)(b) was free to leave. § 87(2)(b) refused to show his ID and, according to both officers, pushed PO Elsayed out of the way as he ran towards an

apartment door that was unlocked.

The minimal intrusion of approaching to request information is permissible when there is some objective credible reason for that interference not necessarily indicative of criminality. When a police officer entertains a reasonable suspicion that a particular person has committed is committing or is about to commit a felony or a misdemeanor, the CPL authorizes a forcible stop and detention of that person. Innocuous behavior alone will not generate a reasonable suspicion that a crime is at hand. People v. DeBour, 40 N.Y. 2d 210 (1976) (Encl. Board Review 01).

It is well settled that when an officer asks an individual to provide identification or destination information, the request implicates the initial tier of the De Bour analysis. Police officers have fairly broad authority to approach and pose questions, but may not do so on mere whim or caprice. People v. McIntosh, 96 N.Y.2d 521 (2001) (Encl. Board Review 13)

A person glancing back and forth at officers, while at the same time shielding his body from view with his hands in his pockets, provides officers an objective credible reason to approach that person. People v. Fruto, 7 Misc. 3d 1012(A) (2005) (Encl. Board Review 14)

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§ 87(2)(g)

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Allegation E: Abuse of Authority- PO Omar Elsayed entered § 87(2)(b) in Staten Island.

Allegation F: Abuse of Authority- PO Lee Maldonado entered § 87(2)(b) in Staten Island.

§ 87(2)(b) stated that upon entering the apartment, he continued his conversation with PO Elsayed and PO Maldonado as they stood in the hallway. § 87(2)(b) alleged that as he attempted to close the door to the apartment, both officers pushed back on the door to keep it open and that PO Elsayed put his right foot in the doorway to prevent § 87(2)(b) from shutting the door. As § 87(2)(b) attempted to close the apartment door, he screamed out the name of § 87(2)(b). When § 87(2)(b) approached the door, § 87(2)(b) let go and both PO Elsayed and PO Maldonado allegedly entered inside the apartment. PO Elsayed then stated, “We are the police.”

Both PO Elsayed and PO Maldonado stated that they followed § 87(2)(b) after he ran towards apartment 10C. § 87(2)(b) then attempted to close the apartment door on the officers. Both PO Elsayed and PO Maldonado said that they pushed the door back towards § 87(2)(b) as he attempted to close it, and that PO Elsayed also put his foot in the doorway in an attempt to prevent § 87(2)(b) from closing the door. Both officers denied that they entered the apartment, and claimed that the extent of the officers’ intrusion into the apartment was PO Elsayed sticking his foot in the doorway.

Without more information, the investigation could not determine whether the officers ever fully walked into the apartment. Furthermore, it could not be established whether PO Maldonado, in pushing against the door, ever crossed the door’s threshold. However, it is clear that PO Elsayed, who both pushed against the door and placed his foot in the doorway to prevent the door from being closed, did at least cross the threshold.

Absent consent or exigent circumstances, no private home may be entered by the police to arrest an occupant if an arrest warrant has not been obtained, even if they have probable cause to make the arrest. “At the very core [of the Fourth Amendment] stands the right of a man to retreat into his home and there be free from unreasonable governmental intrusion. The Fourth Amendment has drawn a firm line at the entrance of the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant.” People v. Reese, 799 N.Y.S. 2d 163 (2004) (Encl. Board Review 02).

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Allegation G: Discourtesy- Inside of § 87(2)(b) in Staten Island, PO Omar Elsayed spoke rudely to § 87(2)(b)

Allegation H: Force- Inside of § 87(2)(b) in Staten Island, PO Lee Maldonado used physical force against § 87(2)(b)

Allegation I: Force- Inside of § 87(2)(b) in Staten Island, PO Lee Maldonado used a chokehold against § 87(2)(b)

Allegation J: Force- Inside of § 87(2)(b) in Staten Island, PO Lee Maldonado restricted the breathing of § 87(2)(b)

Allegation K: Force- Outside of § 87(2)(b) in Staten Island, PO Lee Maldonado used physical force against § 87(2)(b)

Allegation L: Discourtesy- Outside § 87(2)(b) in Staten Island, PO Lee Maldonado spoke rudely to § 87(2)(b)

As previously noted, the officers attempted to push back on the door of apartment § 87(2)(b). § 87(2)(b) attempted to close the door. Upon placing his foot in the door in order to prevent § 87(2)(b) from closing the door, PO Elsayed allegedly stated to § 87(2)(b) “Bro, are you fucking crazy?” PO Elsayed and PO Maldonado then allegedly entered the apartment, and PO Maldonado allegedly used his right forearm to shove § 87(2)(b) and told her to back-up. Allegedly, § 87(2)(b) was hit in the chest and her head made contact with a wall. § 87(2)(b) told the officers to handcuff him and PO Elsayed grabbed his right arm. PO Maldonado then allegedly pushed his head down and placed him in a headlock for approximately ten seconds. § 87(2)(b) stated that PO Maldonado’s bicep and forearm made contact with his wind-pipe and that he stated two times, “I can’t breathe,” before PO Elsayed told PO Maldonado to let go of § 87(2)(b). Upon being placed in handcuffs, § 87(2)(b) was taken outside to an unmarked Impala. After being placed in the vehicle, PO Maldonado allegedly swung his arm at § 87(2)(b) and hit him in the chest with his fist. PO Maldonado then allegedly grabbed § 87(2)(b)’s shirt and pulled it towards him and stated, “You motherfucker, I am going to make I look for you every day I work, my whole eight hour shift.”

Both officers stated that when they pushed the door of the apartment, § 87(2)(b) attempted to close the door on them, and that the extent of their entry was PO Elsayed placing his foot in the threshold of the doorway. They said that from outside the doorway, they continued to ask § 87(2)(b) to step out of the apartment. At this time, the officers also observed § 87(2)(b) inside of the location, who was attempting to get § 87(2)(b) to present his ID to the officers. The officers recalled that § 87(2)(b) told them they would have to arrest him and take him to jail, and that he then stepped into the hallway and punched PO Elsayed in the right eye. § 87(2)(b) then allegedly ran down the hallway and both officers caught up to him in a staircase. § 87(2)(b) allegedly resisted arrest by flailing his arms and pushing the officers away as they attempted to handcuff him. The officers said they grabbed his arms and placed him under arrest, then took him down the elevator and placed in an unmarked vehicle. Both officers denied directing any profanities to any of the civilians at the location. PO Maldonado denied shoving § 87(2)(b) or using a chokehold against § 87(2)(b). PO Elsayed stated he did observe any physical force used against § 87(2)(b) and did not observe PO Maldonado place § 87(2)(b) in a chokehold. PO Maldonado also stated that he did not use physical force against § 87(2)(b) while he was in the unmarked vehicle. § 87(2)(b)’s arrest photograph does not indicate any bruising or swelling to his neck and throat area, but photos of § 87(2)(b) taken on the date of his CCRB interview show bruising to his left and right shoulders and arms. (Board Review 15) § 87(2)(b)’s medical records indicate that he reported to medical personnel that he had been in an altercation with police, during which he was punched and kicked. He reported arm and knee pain as well as back and neck discomfort. He was diagnosed with a contusion. He did not tell medical personnel that he had been placed in a chokehold.

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Allegation M: Discourtesy- At the 121st Precinct stationhouse, Sgt. John Todaro spoke rudely to

§ 87(2)(b)

Allegation N: Force- At the 121st Precinct stationhouse, PO Lee Maldonado used physical force against

§ 87(2)(b)

Allegation O: Abuse of Authority- At the 121st Precinct stationhouse, Sgt. John Todaro authorized a strip search of

§ 87(2)(b)

Allegation P: Discourtesy- At the 121st Precinct stationhouse, PO Lee Maldonado spoke rudely to

§ 87(2)(b)

Allegation Q: Abuse of Authority- At the 121st Precinct stationhouse, PO Lee Maldonado strip searched

§ 87(2)(b)

Allegation R: Abuse of Authority- At the 121st Precinct stationhouse, PO Lee Maldonado threatened

§ 87(2)(b)

with the use of force.

§ 87(2)(b) alleged that upon arriving at the 121st Precinct stationhouse, an officer identified by the investigation as Sgt. Todaro stated to him, “You fucking like hitting my officers, you fucking punk, don’t worry about it because you’re going to fucking jail.” PO Maldonado then escorted § 87(2)(b) into the stationhouse and allegedly continuously gave him a light shove into a brick wall for approximately five to ten seconds as he was walked inside. Sgt. Todaro then allegedly notified § 87(2)(b) that a strip search would be conducted. § 87(2)(b) was escorted to a white room in the back of the stationhouse, where PO Maldonado allegedly conducted a strip search and stated, “Open your ass and lift your sack up.”

Both officers stated that upon arrival at the stationhouse, they did not observe any injuries on § 87(2)(b)

§ 87(2)(b) PO Elsayed recalled that he spoke to Sgt. Todaro in regards to an injury to his right eye after being punched by § 87(2)(b)

PO Maldonado recalled that the officers interacted with Lt. Trabulsy and Sgt. Todaro at the desk and Sgt. Todaro verified the arrest of § 87(2)(b)

PO Maldonado stated that the officers asked § 87(2)(b) if he wanted medical attention but he refused. PO Elsayed stated that he performed a routine search of § 87(2)(b) before he was placed in the cells and both officers escorted § 87(2)(b) to the cell area. Both officers denied that § 87(2)(b) was ever strip searched.

Sgt. Todaro recalled being at the desk when PO Elsayed and PO Maldonado walked in with § 87(2)(b)

§ 87(2)(b) but said he did not speak with § 87(2)(b) directly. Sgt. Todaro recalled that a search was conducted of § 87(2)(b) pursuant to him being placed in the cells, but Sgt. Todaro denied authorizing a strip search and was not aware of § 87(2)(b) being strip searched. All of the officers interviewed denied directing any profanity at § 87(2)(b) while at the stationhouse. PO Elsayed stated that after placing § 87(2)(b) in the cells, § 87(2)(b) allegedly told the officers, “Watch I’ll fucking get you,

fuck you.” The Tour 3 Command Log from the date of the incident does not indicate that a strip search was ever conducted on § 87(2)(b)

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Pod: 14

Investigator:

Signature

Print

Date

Supervisor:

Title/Signature

Print

Date

Reviewer:

Title/Signature

Print

Date

Reviewer:

Title/Signature

Print

Date